

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CIVIL ACTION NO: 3:05CV429**

BOYCE W. POPE, JR.,)	
Plaintiff)	
vs.)	
)	<u>ORDER</u>
STOWE PHARR MILLS INC., and)	
KAREN MAYHEW,)	
Defendants.)	
)	

Pursuant to Title 28, United States Code, Section 636(b) and the standing orders of designation entered by the district court, the undersigned magistrate judge has before him the "Motion to Dismiss" (Document No. 8) and "Brief in Support...." (Document No. 9), filed January 9, 2006, by Defendant Karen Mayhue.

In accordance with the dictates of Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), the undersigned is required to notify Plaintiff that he has the right to file a response in opposition to the instant motion. The response may include affidavits in opposition to the motion, or other responsive material. However, the court notes that it is not required to consider affidavits in determining whether dismissal is appropriate under Federal Rule of Civil Procedure 12(b)(6). See Fed. R. Civ. P. 12(b)(6) and Advisory Committee Notes to Rule 12(b)(6). Inasmuch as uncontested motions are routinely granted, Plaintiff's failure to respond to the motion to dismiss within the allotted time may cause the court to conclude that the Defendant's contentions are undisputed. As a result, the court may grant dismissal in favor of the Defendant. Accordingly, unless Plaintiff files a response in opposition to the motion, it is likely that dismissal will be granted in favor of the Defendant. Any response or affidavits or other responsive material must be filed no later than

September 1, 2006.

Any response filed by Plaintiff should be accompanied by a brief containing a concise statement of reasons for Plaintiff's opposition and a citation of authorities upon which Plaintiff relies. Plaintiff is reminded that affidavits must be made on personal knowledge, contain facts admissible in evidence and be made by one shown to be competent to testify. A false statement under oath or under penalty of perjury may be a crime punishable as provided by law.

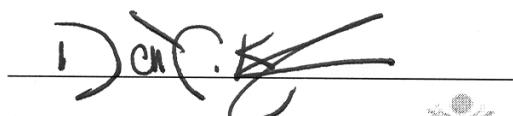
The original and one copy of Plaintiff's response should be mailed to the Clerk of U.S. District Court, and a copy served upon counsel for each Defendant. Any pleadings presented to this court for filing must be accompanied by a certificate stating that Plaintiff has served copies on counsel for the Defendants.

IT IS, THEREFORE, ORDERED that the Plaintiff has until **September 1, 2006**, within which to respond to the Defendant's Motion to Dismiss.

This Order is entered in preliminary response to Defendant's Motion to Dismiss.

The Clerk is directed to mail a copy of the Defendant's Motion to Dismiss and Brief in Support (Document Nos. 8 and 9) to Plaintiff, and to certify copies of this Order to Plaintiff, to counsel for the Defendants, and to the Honorable Robert J. Conrad, Jr.

Signed: August 11, 2006



David C. Keesler
United States Magistrate Judge
